



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10**

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REGIONAL
ADMINISTRATOR'S
DIVISION

October 17, 2022

Steven Cohn, State Director
BLM Alaska
222 West 7th Avenue, Stop #13
Anchorage, Alaska 99513

Dear Steven Cohn:

The U.S. Environmental Protection Agency has reviewed Bureau of Land Management's August 2022 Notice of Intent to prepare an Environmental Impact Statement to consider the impacts of opening lands subject to the Alaska Native Claims Settlement Act of 1971 (ANCSA) 17(d)(1) Withdrawals (EPA Project Number 22-0047-BLM). The project area includes BLM-managed lands in Alaska within the Bay, Bering Sea-Western Interior, East Alaska, Kobuk-Seward Peninsula, and Ring of Fire planning areas. EPA has conducted its review pursuant to the National Environmental Policy Act and our review authority under Section 309 of the Clean Air Act. The CAA Section 309 role is unique to EPA and requires EPA to review and comment publicly on any proposed federal action subject to NEPA's environmental impact statement requirement.

The NOI states that the DEIS will evaluate the potential environmental impacts associated with opening up to 28 million acres of BLM-administered lands in Alaska currently subject to withdrawals established pursuant to section 17(d)(1) of ANCSA. Full or partial revocation of the ANCSA 17(d)(1) withdrawals may result in changes to land use that could affect local residents, wildlife, vegetation, cultural resources, subsistence use, air resources, and water resources. The range of alternatives that the DEIS will consider include full or partial revocation of the ANCSA 17(d)(1) withdrawals, making one or more withdrawals under the Federal Land Policy and Management Act of 1976 (FLPMA), or retention of some or all the ANCSA 17(d)(1) withdrawals.

EPA is providing recommendations for the DEIS that include considerations related to climate change and environmental justice, among other topics. The enclosed Detailed Comments provide the full range of recommendations for the DEIS. Thank you for the opportunity to review the NOI for this project. If you have questions about this review, please contact Caitlin Roesler of my staff at 206-553-6518 and roesler.caitlin@epa.gov, or me, at (206) 553-1774 or at chu.rebecca@epa.gov.

Sincerely,

Rebecca Chu, Chief
Policy and Environmental Review Branch

Enclosure

**U.S. EPA Detailed Comments on the
ANCSA 17(d)(1) Withdrawals NOI
Alaska
October 2022**

General Components of NEPA Analysis

Purpose and Need

We recommend the EIS include a clear and concise statement of the underlying purpose and need for the proposed project, consistent with the implementing regulations for NEPA. An appropriately defined purpose and need statement is of critical importance to setting up the analysis of a range of reasonable alternatives in the EIS.

Range of Alternatives

We recommend that the EIS include a range of reasonable alternatives that meet the stated purpose and need for the project, are responsive to the issues identified during the scoping process and include options for avoiding significant environmental impacts. This will ensure that the NEPA analysis provides agency decision makers and the public with information that defines the issues and identifies a clear basis for the choices made among the range of alternatives, as required by NEPA.

We recommend that the EIS identify the specific criteria that were used to: (1) develop the range of reasonable alternatives, (2) eliminate certain alternatives, and (3) select the agency preferred alternative. In addition, we recommend the EIS provide a clear discussion of the reasons for the elimination of alternatives that are not evaluated in detail.

Affected Environment

EPA recommends the EIS “succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration, including the reasonably foreseeable environmental trends and planned actions in the area(s).”¹ We recommend focusing on resources, ecosystems, and communities that are “at risk” or have the potential to be significantly impacted by the proposed project. Trend data, where available, can be used to establish and project a reasonably foreseeable baseline for the affected resources, and to predict the environmental effects of the project when added to this baseline.

Tiered Analysis

If all or some of ANCSA 17(d)(1) withdrawals were revoked, the allowed land uses on those areas may change. According to BLM, activities permitted on these areas depend on several factors (e.g., overlapping withdrawals, land status, and the overarching approved resource management plans). EPA recommends the EIS explain the process for determining if tiered NEPA analysis is triggered for future activities (e.g., mining exploration).

Environmental Resource Impacts

Water Quality and Aquatic Resources

We recommend that the EIS characterize baseline surface water and groundwater quality, quantity, and interactions; evaluate the impacts of the alternatives on these hydrologic components; and describe mitigation for adverse impacts. We recommend the EIS describe aquatic habitats in the affected environment by resource type, including baseline condition information for aquatic resources.

¹ 40 C.F.R. § 1502.15.

Air Quality

EPA recommends that the EIS evaluate how the proposed project and alternatives could affect air quality and what measures may be needed to mitigate potentially significant impacts. In the EIS, ensure compliance with state and federal air quality regulations; disclose the potential impacts from temporary or cumulative degradation of air quality; and consider whether the reasonably foreseeable impacts of project-related air emissions would result in any adverse impact on air quality or air quality-related values.

Climate Adaptation

In characterizing the existing environment, EPA recommends that the EIS include existing and reasonably foreseeable environmental trends related to a changing climate. We additionally recommend that the EIS include a discussion of reasonably foreseeable effects that changes in the climate may have on the proposed project and the project area. If projected changes could notably exacerbate the environmental impacts of the project, EPA recommends these impacts also be considered as part of the NEPA analysis.

Fish and Wildlife

EPA recommends that the EIS evaluate impacts to fish and wildlife from the proposed project and alternatives, giving special consideration to listed and proposed species under the Endangered Species Act.

Hazardous Materials

We recommend that the EIS discuss any past, current, or projected future Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) activities in the project area and that the EIS summarize these CERCLA activities. In addition, we recommend that the EIS analyze and disclose any potential interactions between potential project impacts and existing contamination and ensure that project actions do not interfere with ongoing investigations or cleanup efforts. We also recommend that potential health impacts to local communities or other project area users be identified.

Environmental Justice

Executive Order 12898 requires each federal agency to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.²

CEQ has developed guidance concerning how to address Environmental Justice (EJ) in the environmental review process.³ In accordance with this guidance, EPA recommends that the EIS address the following points:

- Identify specific low income or minority communities that may be impacted by the project.
- Describe the efforts that have been or will be taken to meaningfully involve and inform affected communities about project decisions and impacts.
- Disclose the results of meaningful involvement efforts, such as community identified impacts.
- Evaluate identified project impacts for their potential to disproportionately impact low income or minority communities, relative to a reference community.

² EO 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations. February 11, 1994.

³ <https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf>.

- Disclose how potential disproportionate impacts and EJ issues have been or will be addressed by a BLM decision making process.
- Propose mitigation for unavoidable impacts that will or are likely to occur.
- Include a summary conclusion, sometimes referred to as an “environmental justice determination” that concisely expresses how EJ impacts have been appropriately avoided, minimized, or mitigated.

We also recommend that particular attention be given to consideration of any dependence of local communities on local and regional subsistence resources, access to those resources, and perception of the quality of those resources. Additional information and tools for environmental justice analysis can be found on EPA’s website at: <https://www.epa.gov/environmentaljustice>.

Identifying EJ Concerns

To identify where EJ concerns exist, EPA suggests using three tools: Environmental Justice Screening and Mapping Tool (EJScreen);⁴ the BLM EJ Mapping Tool and Guidance;⁵ and Climate and Economic Justice Screening Tool (CEJST).⁶ EPA considers a project to be in an area of potential EJ concern when an EJScreen analysis for the impacted area shows one or more of the twelve EJ Indices at or above the 80th percentile in the nation and/or state. An EJScreen analysis which does not reveal the potential for EJ concerns does not mean that there are definitively no EJ concerns present.

Projects in rural locations (e.g., mining and energy extraction projects) can often occur near communities with EJ concerns experiencing critical service gaps (e.g., food deserts, medically underserved areas) or near locations where Tribal and indigenous peoples reside. EPA recommends consulting data in EJScreen on these topics (and other reasonably available data) to help inform EJ scoping efforts.

CEJST can be used to assist Federal agencies in identifying and defining disadvantaged communities for the purposes of the Justice40 Initiative.⁷ CEJST helps users consider census tracts identified as ‘disadvantaged’ and determine disproportionate impacts by the project. EJScreen and CEJST are complementary tools. CEJST data is available within the current version of EJScreen (Version 2.1).

EPA recommends the EIS also consider populations with EJ concerns that are not place-based. The use of GIS screening tools and census categories assumes that populations are place-based. Populations that use common resources and locations (e.g., for agricultural, recreational, or subsistence activities) may also be disproportionately impacted by project activities.

EPA recommends the EIS address the following considerations for use areas that may overlap with the project area:

- Identify community traditional use areas for subsistence, harvesting, hunting, fishing, travelling, camping, and other uses.
- Describe the potential access limitations to these traditional use areas and their impacts to local communities.
- Coordinate with the tribes and communities on options for mitigating impacts associated with accessibility to traditional and accustomed use areas.

⁴ <https://ejscreen.epa.gov/mapper/>.

⁵ https://www.blm.gov/sites/default/files/docs/2022-09/IM2022-059_att1.pdf.

⁶ <https://screeningtool.geoplatform.gov/en/#3/33.47/-97.5>.

⁷ <https://www.whitehouse.gov/environmentaljustice/justice40/>.

- Identify project activities that may conflict with traditional and accustomed uses.
- Coordinate with the affected tribes and communities to identify mitigation options for avoiding and minimizing conflicts between traditional and accustomed subsistence uses and the construction and operation of projects in the area.

As appropriate, Health Impact Assessments (HIAs), Social Impact Assessments (SIAs), and social determinants of health (consideration of economic and social conditions influencing human health) can provide agencies with important background data. Agencies may consider reaching out to entities both inside and outside the Federal government to seek their help in preparing HIAs, SIAs, and considering the social determinants of health, as either part of or an addendum to this, or a future tiered, NEPA document.

When analyzing a proposed action's effect on people of color or low-income populations, EPA recommends consideration of historical and existing data. These include cultural, health, and occupational-related variables such as differential patterns of use or consumption of natural resources or diets (e.g., subsistence/supplemental hunting and fishing), which may suggest increased exposure to environmental pathways presenting potential health risk.

For example, where appropriate, Indigenous Traditional Ecological Knowledge (ITEK) can inform Federal decision making along with scientific inquiry.⁸ ITEK is a body of observations, oral and written knowledge, practices, and beliefs that promote environmental sustainability and the responsible stewardship of natural resources through relationships between humans and environmental systems. When considering the use of ITEK, note that Tribal Nations have unique needs concerning data privacy, cultural information, and other issue that arise in participatory science, which may not be present in non-tribal projects.

Tribal Consultation

EPA encourages BLM to consult with the Tribes and incorporate feedback from the Tribes when making decisions regarding the project. EPA recommends the EIS describe the issues raised during the consultations and how those issues were addressed.

Mitigation

EPA recommends that the EIS identify the type of activities that would require mitigation measures because of this action, and the parties responsible for implementing mitigation. Identify in the EIS, to the extent possible, mitigation goals and measurable performance standards to reduce impact.

Monitoring

EPA recommends that the project implement an environmental monitoring and adaptive management program design to assess both impacts from the project and whether implemented mitigation measures are effective. We recommend that the monitoring programs or plans be described in the EIS with a sufficient level of detail to evaluate the monitoring effectiveness at meeting monitoring goals and that the EIS also discuss public participation, and how the public can get information on mitigation effectiveness and monitoring results.

⁸ <https://www.whitehouse.gov/wp-content/uploads/2021/11/111521-OSTP-CEQ-ITEK-Memo.pdf>.